



California Regional Water Quality Control Board

Santa Ana Region



Linda S. Adams
Secretary for
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Arnold Schwarzenegger
Governor

October 29, 2007

Sandra Boyle
Rancon Realty Fund IV
400 South El Camino Real, Suite 1100
San Mateo, CA 94402

CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE PROPOSED NORTH RIVER PLACE OFFICE BUILDING, CITY OF SAN BERNARDINO (ACOE REFERENCE NO. SPL – 2007 – 439SLP)

Dear Ms. Boyle:

On March 2, 2007, we received an application for Clean Water Act Section 401 Water Quality Standards Certification (Certification), submitted on your behalf by Michael Brandman Associates, for the proposed North River Place Office Building at the Tri-City Corporate Center in the City of San Bernardino. On April 24, 2007, we received additional requested information, including an amended site plan and Water Quality Management Plan (WQMP).

This letter responds to your request for certification that the proposed project, described in your application and summarized below, will comply with State water quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin (1995) and subsequent Basin Plan amendments:

Project Description: Construction of a three-story, 71,011 square foot office building and associated parking lot on a 13-acre portion of the Tri-City Corporate Center. A large portion of the parking lot overlies the Park Centre Landfill, formerly operated by the City of San Bernardino from 1950 to 1958. The construction of the project includes a new storm drain outfall to the adjacent Mission Creek Channel. The project is located south of the confluence of the Mission Creek Channel and the Santa Ana River in an un-sectioned portion of Township 1 South, Range 4 West the U.S. Geological Survey *San Bernardino South, California*, 7.5-minute topographic quadrangle map (34 deg. 04 min. 23 sec. N/-117 deg. 16 min. 15 sec. W).

Receiving water: Mission Creek Channel.

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Fill area: 0.002 acres of permanent impact (31 linear feet).

Dredge/Fill volume: N/A

Federal permit: U.S. Army Corps of Engineers Nationwide Permit No. 39.

You have proposed to mitigate water quality impacts as described in your Certification application and subsequent application submittals. The proposed mitigation is summarized below:

Onsite Water Quality Standards Mitigation Proposed:

- Nuisance flows and 'first-flush' discharges from the proposed project and tributary areas owned or controlled by Rancon Realty Fund IV, will be treated in a hydrodynamic separator.
- There will be no landscaping or underground irrigation lines or other wet utilities overlying the Landfill.
- Landscaped areas that do not overlie the Park Place Landfill will be depressed such that the 'first-flush' volume is infiltrated.
- Additional site-specific best management practices (BMPs) will be specified in the site's Storm Water Pollution Prevention Plan (SWPPP) and final WQMP.

Offsite Water Quality Standards Mitigation Proposed:

- Augmenting funding will be provided, consisting of \$100,000.00, towards implementing source reduction and public education best management practices, with corresponding water quality monitoring, in the Lytle Creek Watershed¹. The funds will be held in a vehicle acceptable to the Executive Officer and disbursed to implementing entities at the direction of Regional Board staff.

Should the proposed project impact state- or federally-listed endangered species or their habitat, implementation of measures identified in consultation with U.S. Fish and Wildlife Service and the California Department of Fish and Game will ensure those impacts are mitigated to an acceptable level. Appropriate BMPs will be implemented to reduce pollutants in construction-related discharges to Waters of the State. This project is over one acre. Therefore, coverage under the State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order 99-08 DWQ, is required, as is development of a SWPPP to control the discharge of pollutants from the project site.

¹ The funding amount is based on the avoided normal cost of implementing an acceptable treatment control BMP. It does not include avoided extraordinary costs of implementing the BMP imposed by the technical constraints created by the presence of the landfill.

Since the proposed project involves the development of an existing landfill, the project must satisfy the conditions of the California Code of Regulations, Title 27, which are the consolidated regulations for treatment, storage, processing, or disposal of solid waste. Specifically, the conditions of Section 21190 of Title 27 must be addressed prior to any post closure land development of the site. Additional review and approval will be provided by staff of the Regional Board's Land Disposal Section.

The presence of the Park Centre Landfill represents a significant and unique limitation on the application of various treatment controls to remove pollutants from storm water runoff from the project site, pathogens in particular. Consequently, Regional Board staff does not believe that discharges of pathogens can be adequately addressed through on-site treatment control best management practices normally used to comply with the requirements of Regional Board Order No. R8-2002-0012, commonly known as the San Bernardino County Urban Storm Water Runoff Permit. The Permit requires that all permittees/project proponents may (1) propose BMPs based on a watershed approach (2) establish a storm water pollution prevention fund for such regional solutions or (3) propose other innovative and proven alternatives to address storm water pollution. In order to address pathogens, you have proposed to participate in a regional program involving pathogen source reductions in the Lytle Creek Watershed by providing augmenting funding. In consideration of the unique circumstances of the project, this proposal is acceptable.

The funding will be put towards implementation of source reduction and public education best management practices in conjunction with water quality monitoring for pathogens. The funds will be held in a financial vehicle acceptable to the Executive Officer and disbursed to implementing third-party entities at the direction of the Executive Officer. Disbursement of the funds will occur in a manner similar to current grant management practices in order to assure that implementing entities meet the objectives of the program.

You have submitted an application for coverage under a nationwide permit from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. You have applied for a Streambed Alteration Agreement with the California Department of Fish and Game. Pursuant to CEQA, the City of San Bernardino adopted a final Mitigated Negative Declaration in 1993. Subsequently, the City prepared an Addendum to the previous Mitigated Negative Declaration on June 29, 2006. The Executive Officer has considered the City's final Mitigated Negative Declaration and Addendum in the issuance of this Certification.

This 401 Certification is contingent upon the execution of the following conditions:

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1. The proposed structural storm water BMPs must be constructed and operational prior to the occupancy of the proposed building.
2. Regional Board staff and other authorized representatives must be allowed:
 - a. Entry upon premises where storm water treatment facilities are located, or where records are kept under the requirements of this Certification or other applicable waste discharge requirements;
 - b. Access to copy any records that are kept under the requirements of this Certification or other applicable waste discharge requirements;
 - c. To inspect any facility, equipment (including monitoring and control equipment), practices, or operations related to the treatment of storm water runoff from the project site; and
 - d. To photograph, sample and monitor for the purpose of assuring compliance with this Certification or other applicable waste discharge requirements.
3. This Certification and any subsequent amendments must be maintained on site as a denoted element of any SWPPP or WQMP.
4. Rancon Realty Fund IV, its successors and assignees ("Rancon Realty Fund IV"), must contribute \$100,000.00 in augmenting funds towards the implementation of source reduction and public education best management practices, with corresponding water quality monitoring for pathogens in the Lytle Creek Watershed. The funds must be secured by a financial assurance mechanism acceptable to the Executive Officer (e.g., a letter of credit) and disbursed to implementing third-party entities at the direction of the Executive Officer. No later than January 4, 2008, Rancon Realty Fund IV is required to: (1) have the funds available to be drawn upon in full and (2) have obtained a financial assurance mechanism for those funds satisfactory to the Executive Officer. If the financial assurance mechanism expires or terminates for any reason before all \$100,000.00 in augmenting funds are expended, Rancon Realty Fund IV shall obtain alternate coverage satisfactory to the Executive Officer within 60 days after receiving notice of termination.
5. This Certification is transferable only upon written notice to the Executive Officer. The notice must include written acknowledgement and acceptance of this Certification by the transferees' authorized representatives and shall indicate the assignment of responsibility, and the mechanism for that assignment, for each numbered condition of this Certification.

Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:

- (a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.

- (b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- (c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

Although we anticipate no further regulatory involvement, if the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, we may formulate Waste Discharge Requirements.

In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.

In response to a suspected violation of any condition of this certification, the Santa Ana Regional Water Quality Control Board (Regional Board) may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Board deems appropriate. The burden, including costs, of the reports shall be reasonable in relation to the need for the reports and the benefits to be obtained from the reports.

In response to any violation of the conditions of this certification, the Regional Board may add to or modify the conditions of this certification as appropriate to ensure compliance. Pursuant to California Code of Regulations Section 3857, we will take no further action on your application. This letter constitutes a technically conditioned water quality certification. Please notify our office five (5) days before construction begins on this project.

This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act Section 401. I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other

applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 200-0017-DWQ is available at www.swrcb.ca.gov/resdec/wqorders/2003/wqo/wqo2003-0017.pdf

Should there be any questions, please contact Adam Fischer at (951) 320-6363, or Mark Adelson at (951) 782-3234.

Sincerely,



GERARD J. THIBEAULT
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Shannon Pankratz
State Water Resources Control Board, OCC – Erik Spiess
State Water Resources Control Board, DWQ-Water Quality Certification Unit –
Bill Orme
California Department of Fish and Game, Ontario Office – Jeff Brandt
U.S. EPA, Supervisor of the Wetlands Regulatory Office WTR- 8 – Eric Raffini
and David Smith

APF:401/certifications/north river place 362007-01

